

STATE OF MICHIGAN  
DEPARTMENT OF ATTORNEY GENERAL



MIKE COX  
ATTORNEY GENERAL

P.O. Box 30754  
LANSING, MICHIGAN 48909

June 6, 2006

Clerk of the Court  
Ingham County Circuit Court  
Courthouse  
Mason, MI 48854

Dear Clerk:

Re: *Linda A. Watters, Commissioner, Office of Financial and Insurance Services*  
*v Ultimed HMO of Michigan, Inc.*  
Ingham County Circuit Court No. 05-1472-CR

Enclosed for filing in the above-entitled cause is Liquidator's Motion for Possession of Equipment and Documents Necessary to Ultimed's Liquidation and Seeking to Hold Harley Brown in Contempt of Court for Disobeying the Court's April 10, 2006 Corrected Liquidation Order; Notice of Hearing; Proof of Service; and \$20.00 check to cover motion fee.

Very truly yours,

A handwritten signature in black ink, appearing to read "Christopher L. Kerr".

Christopher L. Kerr  
Assistant Attorney General  
Insurance and Banking Division  
(517) 373-1160

Enc.

c: David K. Tillman

STATE OF MICHIGAN  
CIRCUIT COURT FOR THE 30<sup>TH</sup> JUDICIAL CIRCUIT  
INGHAM COUNTY

LINDA A. WATTERS, COMMISSIONER,  
MICHIGAN DEPARTMENT OF LABOR AND  
ECONOMIC GROWTH, OFFICE OF FINANCIAL  
AND INSURANCE SERVICES

Petitioner,

Case No. 05-1472-CR

Hon. William E. Collette

v.

ULTIMED HMO OF MICHIGAN, INC.,  
a Michigan health maintenance organization,

Respondent.

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E. John Blanchard (P28881)  
Christopher L. Kerr (P57131)  
Assistant Attorneys General  
**Michigan Department of Attorney General  
Insurance & Banking Division**  
Attorneys for Petitioner,  
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Ultimed's Affiliates  
3400 Russell Street  
Suite 205  
Detroit, MI 48207-2018  
Telephone: (313) 832-6000

**LIQUIDATOR'S MOTION FOR POSSESSION OF EQUIPMENT AND DOCUMENTS  
NECESSARY TO ULTIMED'S LIQUIDATION  
AND  
SEEKING TO HOLD HARLEY BROWN IN CONTEMPT OF COURT FOR  
DISOBEYING THE COURT'S APRIL 10, 2006 CORRECTED LIQUIDATION ORDER**

**Introduction**

Pursuant to the Corrected Order for Liquidating Receivership and Declaration of Insolvency of Ultimed HMO of Michigan, Inc. entered on April 10, 2006 (the "Liquidation Order"), the Court appointed Petitioner Linda A. Watters as Liquidator for Ultimed HMO of Michigan, Inc. ("Ultimed" or the "Company"). The Liquidation Order further appointed James Gerber as a Special Deputy Liquidator for Ultimed. Among other things, the Liquidation Order requires Ultimed's affiliates and former owner, Harley Brown, to "fully cooperate" with the

Liquidator and Special Deputy Liquidators during the liquidation. "Full cooperation" specifically includes refraining from obstructing or interfering with the Liquidator and Special Deputy Liquidators in their conduct of the liquidation proceedings.

In order to conserve the assets of Ultimed's liquidation estate, and because Ultimed's business offices are no longer tenantable, on or around May 10, 2005, Mr. Gerber relocated Ultimed's liquidation operations by consolidating them within the same building where the Omnicare and Wellness Plan receiverships are being conducted. To effectuate this relocation, certain computer equipment containing vital information about Ultimed's business was moved to the new location. In addition, Mr. Gerber attempted to relocate approximately 100 boxes of documents relative to the Wayne County indigent care programs that Ultimed provided HMO services to (namely, the Wayne County PlusCare and Adult Benefit Waiver programs). However, Ultimed's former owner, Harley Brown, attempted to prevent the relocation of the computer equipment, and actually prevented relocation of the Wayne County documents, by threatening Mr. Gerber with police involvement if these items were moved.

Because equipment, documents, and information necessary to the Ultimed liquidation still remain in Ultimed's unsecure, un-air conditioned, and unlit prior place of business, and in order to settle any disputes about the propriety of Mr. Gerber relocating the Ultimed computer equipment to the new liquidation site, the Commissioner, as Liquidator, requests the Court to enter an Order entitling the Liquidator to secure possession of these items. In addition, the Commissioner requests that the Court punish Harley Brown for violating the Liquidation Order.

#### **Statement of Facts**

**A. The relocation of the Ultimed liquidation, the associated move (or attempted move) of necessary computer equipment and documents, and Harley Brown's interference.**

Following entry of this Court's Rehabilitation Order on January 25, 2006, Special Deputy Rehabilitator James Gerber took possession of Ultimed's books and records by occupying the Company's business offices located in the building at 2401 20<sup>th</sup> Street, Detroit, Michigan 48216.

By way of history, this building used to be the old Southwest Detroit Receiving Hospital. Currently, the building serves as the principal place of business of other Ultimed affiliates owned and/or controlled by Harley Brown, including Community Health Care Providers, Inc. d/b/a United Community Hospital ("United Community Hospital"). Ultimed conducted its business operations on the fourth floor of the building.

Although not required to do so, Mr. Gerber initially elected to conduct the Ultimed rehabilitation and (after April 10, 2006) liquidation proceedings at this location because the Company's equipment, books, records, and former employees were all situated there. As time progressed, however, Mr. Gerber determined for several reasons that the liquidation operations should be relocated to the site of the Omnicare and Wellness Plan liquidations.

First, because various Ultimed affiliates share this building, Harley Brown, former Ultimed employees, and/or employees of Ultimed's affiliates continued to have unrestricted access to Ultimed's computer files, documents, and other information being used in the liquidation. This access potentially compromised (and continues to compromise) the security of information critical to the liquidation, particularly with respect to any claims that Ultimed's estate may have against Ultimed's affiliates and/or former officers, directors, and employees for improper expenditures of Ultimed assets.

Second, the Ultimed affiliate that owns the building, United Community Hospital, continually sought to charge the Ultimed rehabilitation / liquidation estate monthly rent in the amount of \$33,000, plus utility expenses, for occupying the premises, even though this obligation was purportedly assumed by affiliate Community Coordinated Care Plan, Inc. ("CCCP") pursuant to a May 14, 2004 Assignment and Assumption Agreement. Exhibit A. Thus, although it is the Liquidator's position that Ultimed's estate did not owe the Hospital any rent payments, Mr. Gerber was repeatedly subjected to the Hospital's payment demands. Moreover, at the new liquidation site, Ultimed's liquidation estate pays only \$3,000 a month in

rent, saving the estate significant amounts of money and preserving Ultimed's claims against United Community Hospital from potential claims for offsets associated with rent.

Third, the conditions in the building became so deplorable that continuing to conduct the liquidation at this site was no longer an option. There is no working elevator in the building, severely impeding access to the fourth-floor liquidation operations. In addition, the building is not air conditioned, which became more problematic as outside temperatures increased, particularly with respect to the safety and continued operation of computer equipment that is subject to the risk of overheating. Mr. Gerber was further informed that Detroit Edison had issued an electricity shut-off notice for the building effective May 11, 2006. Upon information and belief, the electricity to the building was shut off on this date, which would have made any work on the liquidation impossible. Mr. Gerber was also informed that payroll checks of the maintenance and security employees of the Ultimed affiliates who worked at the building were no longer clearing. This cast doubt upon (and continues to cast doubt upon) whether there would be (or is) anyone working at the building who can ensure the security of any equipment and documents necessary for the liquidation that remain in the building. Finally, operating all three receiverships that Mr. Gerber is currently managing (Ultimed, Omnicare, and The Wellness Plan) out of the same building would reduce inefficiencies associated with traveling between locations and would otherwise conserve the limited resources of Ultimed's liquidation estate.

In light of all of these considerations, Mr. Gerber determined that relocating the Ultimed liquidation to the same building where the Omnicare and Wellness Plan receiverships are being conducted was both necessary and appropriate. To effectuate this relocation, the computer equipment containing Ultimed's claims and financial systems was required to be moved, and was moved, on or around May 9 and 10, 2006. The moved computer equipment consisted of several Dell computers, printers, and the AMAC and SBT computer systems, all of which contain information pertaining to Ultimed that is integral to the liquidation process.

Ignoring the provisions of the Liquidation Order, Harley Brown actively attempted to obstruct the movement of this computer equipment because he claimed that the equipment is owned by an Ultimed affiliate, Advance Medical Security, Inc., and that the equipment contains information relating to certain Ultimed affiliates. Mr. Brown's obstructionist tactics included calling law enforcement, and upon information and belief, filing a police report to claim that the equipment was "stolen." Notwithstanding this interference, the referenced computer equipment and systems have been relocated to the new liquidation site, thereby allowing the liquidation process to continue. In addition, despite Mr. Brown's claims that the computer equipment contains information pertaining to Ultimed's affiliates, and despite offers being made to copy and provide any such information to Mr. Brown, neither Mr. Gerber nor the undersigned have been contacted since May 10, 2006 to arrange for the copying of this allegedly "necessary" information.

In addition to the computer equipment, the relocation entailed the movement of hundreds of boxes of Ultimed documents. On May 10, 2006, Rose Moving and Storage Company ("Rose") came to the former liquidation site and moved approximately 556 boxes of documents down four flights of stairs (due to the non-working elevators) and loaded them into the moving truck. Exhibit B. Included in these boxes were approximately 100 boxes of documents relating to Ultimed's contracts with Wayne County to provide HMO services to the County's indigent health care limited benefits programs, known as the PlusCare and Adult Benefits Waiver programs. At the April 5, 2006 hearing to convert the Ultimed rehabilitation proceeding to a liquidation, this Court recognized that although these Wayne County contracts were unilaterally assigned to Ultimed affiliate CCCP pursuant to the May 14, 2004 Assignment and Assumption Agreement (see Exhibit A), the liabilities arising from these contracts (and corresponding claims for payment made in the liquidation proceeding) are potential liabilities of Ultimed and relevant to the liquidation. *See* April 5, 2006 Hearing Transcript, Exhibit C, pp 10-12. Nevertheless,

Harley Brown made the untenable claim that these documents were owned by CCCP (although the Assignment and Assumption Agreement does not provide for the transfer of ownership of these records, see Exhibit A) and not pertinent to the liquidation, and demanded, under threat of police involvement, that they be returned to the building. In order to avoid potential conflict, Mr. Gerber instructed the movers to remove the approximately 100 boxes from the truck, carry them back up the four flights of stairs, and return them to their former location. A Rose representative informed Mr. Gerber that the labor costs associated with Mr. Brown's unwarranted interference amounted to \$2,500 of the \$5,025 in total labor cost associated with the move. Moreover, the Wayne County records remain at the former site, accessible to Mr. Brown and other former Ultimed officers, directors and employees and subject to potential alteration, removal, or destruction.<sup>1</sup>

**B. Relevant Liquidation Order provisions.**

Paragraph 9 of the Liquidation Order expressly requires Harley Brown and the named Ultimed affiliates to "fully cooperate" with the Liquidator and Special Deputy Liquidators:

Pursuant to MCL 500.8106(1) and (2), all officers, managers, directors, trustees, owners, employees, agents, parents, subsidiaries, and affiliates of Ultimed, or any other persons or entities having authority over or in charge of any segment of Ultimed's affairs, including but not limited to Harley Brown, Advance Medical Enterprises, Inc., Advance Medical Security, Inc., Ulticare, Inc., Community Health Care Providers, Inc. d/b/a United Community Hospital, Community Care Partners, Inc. and Community Coordinated Care Plan, Inc., ***shall fully cooperate*** with the Liquidator and Special Deputy Liquidators. As used in this Paragraph, "person" shall include a person who exercises control directly or indirectly over the activities of Ultimed through a holding company or other affiliate. Among other things, full cooperation requires:

- a. Prompt replies to any inquiry by the Liquidator or Special Deputy Liquidators, including a written reply when requested;
- b. ***Providing the Liquidator and Special Deputy Liquidators with immediate, full, and complete possession, control, access to, and use of all books, accounts, documents, and other records, information, or***

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<sup>1</sup> These records also contain confidential personal medical information required to be protected by HIPAA. Thus, to the extent that the building is no longer secured, the exposure of these records to potential viewing or theft by intruders or other third parties represents a HIPAA violation.

*property of or pertaining to Ultimed* in his, her, or its possession, custody, or control;

- c. ***Providing the Liquidator and Special Deputy Liquidators with full and complete access to and control of all assets, documents, data, computer systems***, security systems, buildings, leaseholds, ***and property of or pertaining to Ultimed***; and
- d. Providing the Liquidator and Special Deputy Liquidators with full and complete access to all legal opinions, memoranda, letters, documents, information, correspondence, legal advice, and any other attorney-client privileged and/or attorney work product materials relating to Ultimed or the operation of Ultimed and its business, provided to or from Ultimed's in-house or outside counsel by or to Ultimed, its officers, managers, directors, trustees, owners, employees, agents, parents, subsidiaries, or affiliates.
- e. ***Not obstructing or interfering with the Liquidator or Special Deputy Liquidators in the conduct of this Liquidation proceeding*** or any investigation incidental thereto. MCL 500.8106(2). (emphases added).

Paragraph 10 of the Liquidation Order provides penalties against any person or entity that fails to cooperate with the Liquidator or Special Deputy Liquidators as required by Paragraph 9, or that otherwise obstructs or interferes with the Liquidator or Special Deputy Liquidators in the conduct of the liquidation proceeding:

As provided by MCL 500.8106(4), any person or entity that fails to cooperate with the Liquidator or Special Deputy Liquidators, obstructs or interferes with the Liquidator or Special Deputy Liquidators in the conduct of this Liquidation proceeding or any investigation incidental thereto, or violates any order of the Commissioner validly entered under Chapter 81 of the Insurance Code, may:

- a. Be sentenced to pay a fine not exceeding \$10,000.00, or imprisoned for a term of not more than one year, or both; and
- b. After a hearing, be subject to the imposition by the Commissioner of a civil penalty not to exceed \$10,000.00, or the revocation or suspension of any insurance licenses issued by the Commissioner, or both.

In addition, Paragraph 12.b. of the Liquidation Order requires any person or entity, including Harley Brown and the named Ultimed affiliates, having possession, custody, or control of documents, data, records, information, or property of or pertaining to Ultimed, to immediately tender possession of these items to the Liquidator or Special Deputy Liquidators.



## ARGUMENT

- A. **The Court should Order that Special Deputy Liquidator James Gerber is entitled to take complete possession and control of all computer equipment and documents pertaining to Ultimed, including the already-moved computer equipment and the Wayne County documents that remain at the former liquidation site.**

The provisions of this Court's Liquidation Order are clear and unambiguous, entitling the Liquidator and Special Deputy Liquidators to take complete possession and control of the computer equipment and Wayne County documents at issue. Specifically, the Liquidation Order entitles the Liquidator and Special Deputy Gerber to *complete possession and control of all documents, records, information, data, and computer systems* belonging or pertaining to Ultimed. The Liquidation Order further requires Harley Brown and Ultimed's affiliates to immediately tender possession of such items to the Liquidator or Special Deputy Liquidators, and to generally refrain from obstructing or interfering with the liquidation proceedings.

It cannot be disputed that the computer equipment and information stored thereon, as well as the Wayne County documents, belong or pertain to Ultimed, its potential assets and/or liabilities, and the liquidation proceeding. The equipment and documents are necessary to an effective, efficient liquidation of Ultimed's business affairs, including but not limited to the processing of over 900 claims submitted by creditors of Ultimed's estate and the analysis of Ultimed's financial transactions that resulted in the Company's liquidation. Accordingly, the Court should enforce the terms of the Liquidation Order by ordering Harley Brown and/or Ultimed's affiliates to allow Mr. Gerber to take possession of and relocate to the new liquidation site the Wayne County records that remain at the former liquidation site. In addition, the Court should order that, consistent with the terms of the Liquidation Order, Mr. Gerber properly relocated the already-moved computer equipment (consisting of the Dell computers, printers, and AMAC and SBT computer systems) to the new liquidation site.

**B. The Court should treat and punish as a contempt of Court Harley Brown's disobedience of the Liquidation Order by failing to cooperate, obstructing, and interfering with the liquidation proceeding.**

MCL 600.1701 authorizes this Court to punish, by fine, imprisonment, or both, persons guilty of neglect, violation of duty, or misconduct, including disobeying any lawful order of the Court. MCL 600.1701(g). In addition to this statutory authority, Michigan courts have inherent power to enforce compliance with their lawful orders through civil contempt. *In re Colacasides*, 6 Mich App 298; 148 NW2d 898 (1967). The power to punish for contempt is part of the judicial power. *In re White*, 340 Mich 140; 65 NW2d 296 (1954). In *In re Contempt of Robertson*, 208 Mich App 433; 531 NW2d 763 (1995), the Court of Appeals stated that courts have inherent independent authority, as well as statutory authority, to punish a person for contempt. One purpose served by a contempt proceeding is the preservation of the power and dignity of the court. *Cross Co v United Automobile, Aircraft and Agricultural Implement Workers of America, Local 155*, 377 Mich 202; 139 NW2d 694 (1966).

The issuance of an order of contempt rests in the sound discretion of the court. *People v Matish*, 21 Mich App 238; 175 NW2d 348 (1970). Civil contempt seeks to change a respondent's conduct by threatening him with penalty if he does not change it. *Jaikins v Jaikins*, 12 Mich App 115; 162 NW2d 325 (1968). Generally, civil contempt is punishable by a fine of up to \$250.00, or by imprisonment for up to 30 days, or both. MCL 600.1715(1). In a liquidation proceeding, however, any failure to cooperate, obstruction, or interference with the Liquidator or Special Deputy Liquidators in the conduct of the liquidation proceeding is punishable by a fine of up to \$10,000, or by imprisonment for up to one year, or both. MCL 500.8106(4); Liquidation Order, ¶ 10.

In addition to the foregoing relief, the Revised Judicature Act provides that "if the alleged misconduct has caused an actual loss or injury to any person the court shall order the defendant to pay" damages as part of the penalty. MCL 600.1721. It is appropriate for the contemnor to

indemnify any person for losses sustained as a direct result of his contemptuous conduct. *In re Contempt of Calcutt*, 184 Mich App 749, 458 NW2d 919 (1990). As noted in *In re Contempt of Dougherty*, 429 Mich 81; 413 NW2d 392 (1987), there are three sanctions which may be available to a court to remedy or redress contemptuous behavior: criminal punishment to vindicate the court's authority, coercion, to force compliance with the order, and compensatory relief.

Pursuant to the foregoing authority and the plain terms of the Liquidation Order, the Liquidator respectfully requests this Court to punish Harley Brown's disobedience of the Liquidation Order by failing to cooperate with Special Deputy Gerber and, more egregiously, actively obstructing and interfering with the liquidation proceedings by attempting to prevent relocation of the computer equipment and actually preventing Mr. Gerber from removing the Wayne County documents from the former liquidation site. As punishment for his contempt, Mr. Brown should be required to indemnify the Ultimed liquidation estate for its actual costs incurred as a result of his conduct by paying the estate the amount of \$2,500, which amount is directly attributable to moving the approximately 100 boxes of documents down four flights of stairs, loading them into the moving truck, and due to Mr. Brown's interference, unloading them from the moving truck and moving them back up four flights of stairs. In addition, the Court should impose a fine in an amount that it deems appropriate to vindicate the Court's authority and to ensure that Mr. Brown will not further interfere with the liquidation proceeding.

#### **RELIEF REQUESTED**

For the reasons stated above, the Liquidator respectfully requests this Court to enter an Order:

- a) Confirming the propriety of Special Deputy Liquidator James Gerber's decision to relocate the Ultimed liquidation proceedings and, in connection therewith, move the

Dell computers, printers, and AMAC and SBT computer systems to the new liquidation site.

- b) Authorizing James Gerber to take complete possession and control of and relocate to the new liquidation site the approximately 100 boxes of Wayne County records that remain at the former liquidation site.
- c) Treating Harley Brown's disobedience of the Liquidation Order as a contempt of court and, as punishment for such contempt, requiring Mr. Brown to pay \$2,500 to the Ultimed liquidation estate to indemnify the estate for its costs incurred as a result of Mr. Brown's interference, and imposing an additional monetary fine in an amount that the Court deems appropriate to vindicate the Court's authority and to ensure Mr. Brown's future compliance with the Liquidation Order.

Respectfully submitted

Michael A. Cox  
Attorney General

A handwritten signature in black ink, appearing to read "Christopher L. Kerr", is written over a horizontal line.

E. John Blanchard (P28881)  
Christopher L. Kerr (P57131)  
Assistant Attorneys General  
Michigan Department of Attorney General  
Insurance & Banking Division  
Attorneys for Petitioner  
P.O. Box 30754  
Lansing, Michigan 48909  
(517) 373-1160

Dated: June 6, 2006

ASSIGNMENT AND ASSUMPTION AGREEMENT made this 14th day of May, 2004 ("Closing Date"), by and between Ultimed HMO of Michigan, Inc. ("Ultimed"), a Michigan corporation ("Assignor"), and Community Coordinated Care Plan, Inc. ("CCCP"), a Michigan corporation ("Assignee"). Terms not otherwise defined herein shall have the meanings given them in the Contracts referenced herein.

#### **Preliminary Statement**

- A. Pursuant to this Agreement, Assignor has agreed to assign the Contracts and Assignee has agreed to assume all of Assignor's rights and obligations under the Contracts.
- B. Pursuant to this Agreement, Assignor has agreed to sell and Assignee has agreed to buy all of the Assets, consistent with the terms and conditions of this Agreement.
- C. Pursuant to this Agreement, Assignee has agreed to assume all of the Assumed Liabilities.

#### **Contracts**

- (A.) Provider Contract dated June 1, 1997 between Ultimed and Urban Hospital Care Plus, as amended ("Provider Contract").
- (B.) Adult Benefit Waiver Program Agreements dated October 1, 2003 and April 1, 2004 between Ultimed and Wayne County Patient Care Management System ("ABW Agreement").
- (C.) Management Services Agreement dated January 2, 2001 between Ultimed and Ulticare, Inc ("Management Services Agreement").
- (D.) Lease Agreement dated December 31, 2002 between Ultimed and Advance Medical Security, Inc.
- (E.) Lease Agreement dated February 1, 1997 between Ultimed and Community Health Care Providers, Inc. d/b/a United Community Hospital.
- (F.) Primary Care Physician Agreement dated June 1, 1997 between Ultimed and Community Health Care Providers, Inc. d/b/a United Community Hospital, as amended.
- (G.) Hospital Agreement dated May 1, 2002 between Ultimed and Community Health Care Providers, Inc. d/b/a United Community Hospital.

#### **Assets**

- Assignor agrees to sell, and Assignee agrees to buy the following described property:
- A. Cash, investment and trust accounts related to the Provider Contract and ABW Agreement.
  - B. Payroll cash account for employees transferred from Ultimed to CCCP.
  - C. Office equipment, EDP equipment and leasehold improvements.

EXHIBIT

A

- D. Health care receivable arising out of the Provider Contract and ABW Agreement.
- E. Management fee receivable from Ulticare, Inc., arising out of the Management Services Agreement.

**Assumed Liabilities**

Assignee agrees to assume the following liabilities of Assignor:

- A. All provider liabilities for services rendered to members under the Provider Contract and ABW Agreement.
- B. Payroll and all employment-related liabilities for employees transferred from Ultimed to CCCP.
- C. All vendor and trade accounts payable.
- D. All liabilities (asserted and unasserted) resulting from Ultimed's performance under the Provider Contract and ABW Agreement.

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements contained in this Agreement, the parties hereto agree as follows:

1. **Bill of Sale.** Assignor does hereby grant, convey, sell, transfer and deliver to Assignee, its successors and assigns, all of Assignor's right, title and interest in and to all of the Assets. Assignor warrants to Assignee, its successors and assigns that on the date hereof, Assignor is the lawful owner of legal title in and to the Assets, has good and lawful right to sell the Assets and that such title to the Assets is, on the date hereof, free and clear of all claims, liens and encumbrances of any nature whatsoever. Said property is sold in "AS IS" condition, Assignor disclaiming any warranty of merchantability, fitness or working order or condition of the property except that it shall be sold in its present condition, reasonable wear and tear expected.
2. **Assignment of Contracts.** As of the Closing Date, Assignor hereby conveys and assigns all of its right, title and interest in and to the Contracts to Assignee, its successors and assigns. The Assignee hereby assumes and agrees to perform all the remaining and executory obligations of the Assignor under the contract and agrees to indemnify and hold the Assignor harmless from any claim or demand resulting from non-performance by the Assignee. The Assignee shall be entitled to all monies remaining to be paid under the contract, which rights are also assigned hereunder. The Assignor warrants that the contracts are without modification, and remain on the terms contained.

3. **Assumption of Liabilities.** Assignee shall assume, pay, discharge or perform all of the Assumed Liabilities arising on or after or relating to the period on or after the Closing Date. No other obligations or liabilities of Assignor shall be assumed by Assignee.
4. **Final Accounting.** The Assignee shall, within one hundred and eighty (180) days after the Closing Date, prepare a final accounting of the assignment and assumption pursuant to this Agreement. At that time, the parties agree to adjust the Assets and Assumed Liabilities by the amount (if any) resulting from the Final Accounting, and to likewise adjust the consideration given.
5. **Further Assurances.** Each party shall, from time to time at the request of the other party, and without any further consideration, execute and deliver such further instruments and take such further action as may be necessary to more effectively evidence the assignment and assumption pursuant to this Agreement.
6. **Effective Date.** The effective date of this Agreement shall be January 1, 2003.
7. **General Provisions.**
  - a. **Benefit and Assignment.** This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns. This Agreement may not be assigned by any party hereto without the prior written consent of the other party, which consent shall not be unreasonably withheld.
  - b. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Michigan, without giving effect to any conflicts of laws rules.
  - c. **Severability.** If any provision of this Agreement shall for any reason be held invalid or unenforceable, such invalidity or unenforceability shall not affect any other provision hereof, but this Agreement shall, in such event, be construed as if such invalid or unenforceable provision had never been contained therein.
  - d. **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
  - e. **Section Headings.** All section headings in this Agreement are inserted for convenience only and shall not modify or affect the construction or interpretation of this Agreement.
  - f. **Entire Agreement.** This Agreement, together with this Agreement, represents the entire agreement of the parties with respect to the subject matter hereof and supersedes all prior negotiations, commitments or agreements of the parties with respect to such subject matter.

IN WITNESS WHEREOF, the parties hereto have duly executed this Assignment and Assumption Agreement on the date first above written.

**Ultimed HMO of Michigan, Inc.**

By: 

Harley K. Brown, President/ CEO

**Community Coordinated Care Plan, Inc.**

By: 

Harley K. Brown, President/ CEO



## INVOICE

ROSE



MOVING &amp; STORAGE

10421 Ford Road Phone: 313.582.0800  
Dearborn, MI 48126 Fax: 313.582.7637

**ALLIED**  
Agent for Allied Van Lines

## Origin Address

ULTIMED HMO  
2401 20TH STREET  
4TH FLR STAIR CARRY  
DETROIT, MI 48126

## BILLING ADDRESS

THE WELLNESS PLAN  
TERRI MITCHELL  
7700 SECOND AVENUE

DETROIT MI, 48202

## JOB SITE/DESTINATION

THE WELLNESS PLAN  
7770 SECOND AVE.

DETROIT, MI

Invoice Number	Invoice Date	Customer ID	Allied Reg Nbr	Page
1001978	05/11/2006	WELLNE		1 of 1
Customer PO Nbr	Terms	Sales Rep	Our Order Nbr	
P.O.# 800570	DUE UPON RECEIPT	SCHULT	2606040	

CHARGES FOR LABOR AND MATERIALS TO MOVE APPROXIMATELY 556 BOXES & 10 FILE CABINETS, 1\* PC'S, 2 FAX MACHINES & 5 PRINTERS DOWN 4 FLIGHTS OF STAIRS. ELEVATOR IS DOWN. MOVE FROM ORIGIN TO DESTINATION. PLACE PER CUSTOMERS INSTRUCTIONS.

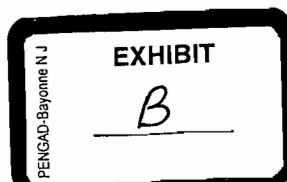
Service Date	Description	Quantity	Unit Price	Ext Price
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move 5-12-06

stermization:

Boxes &amp; Packing Tape \$1,263.00

Time, labor \$5,025.00



TOTAL AMOUNT: 6,288.00

**COPY**

1                   STATE OF MICHIGAN  
2       IN THE CIRCUIT COURT FOR THE COUNTY OF INGHAM

3       LINDA A. WATTERS, COMMISSIONER, )  
4       MICHIGAN DEPARTMENT OF LABOR AND )  
5       ECONOMIC GROWTH, OFFICE OF )  
6       FINANCIAL AND INSURANCE SERVICES, )

7                   Petitioner, )

8       -vs- )

9       ULTIMED HMO OF MICHIGAN, INC., )  
10      a Michigan health maintenance )  
11      organization, )

12                   Respondent. )

13       MOTION FOR LIQUIDATION OF RECEIVERSHIP

14      before the Honorable William E. Collette, Circuit Judge,

15      Ingham County, Michigan - Wednesday, April 5, 2006.

16      APPEARANCES:

17                   CHRISTOPHER L. KERR, P# 57131  
18                   Assistant Attorney General  
19                   P.O. Box 30212  
20                   Lansing, MI 48909  
21                   (517) 373-1160

22                   On behalf of the Petitioner.

23                   DAVID K. TILLMAN, P# 37592  
24                   3400 Russell Street, Suite 205  
25                   Detroit, MI 48207-2018  
                  (313) 832-6000

                  On behalf of the Respondent.

EXHIBIT

C

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## EXAMINATION INDEX

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WITNESSES

PAGE

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NONE

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## EXHIBIT INDEX

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EXHIBIT

IDENTIFIED

ADMITTED

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NONE

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Mason, Michigan

April 5, 2006

10:00 a.m.

RECORD

THE COURT: Insurance Commissioner versus  
Unimed -- or Ultimed.

MR. KERR: Ultimed.

THE COURT: 05-1472. I read your briefs,  
Gentlemen. Mr. Tillman and Mr. Kerr.

MR. KERR: Kerr: Yes, Your Honor.

THE COURT: Go ahead, sir.

MR. KERR: Your Honor, we are here today on  
the Commissioner's petition to convert this rehabilitation  
involving Ultimed HMO of Michigan, Inc., to a liquidation,  
and also seeking a judicial declaration of insolvency.

The facts and law supporting entry of the  
proposed liquidation order are fully set forth in the  
petition. The pivotal facts the Court should be aware of are  
that Ultimed currently only has 77 total members, 35 of whom  
are employees of Ultimed or an Ultimed affiliate. This  
membership base is insufficient to operate a viable, ongoing  
business.

According to Mr. Gerber's report based on the  
documents made available to him, Ultimed has a reported net  
worth in the approximate amount of negative six million

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namely, it's 3.2 million dollars of unpaid pharmacy claims  
from Rite Aid and CVS. Ultimed argues that this business and  
the corresponding liabilities were transferred to an  
affiliate, and that I'll call it CCCP for short, and  
shouldn't be included in the liability calculation, which  
would leave Ultimed with current liabilities of approximately  
3.6 million dollars and a negative net worth of 2.7 million  
dollars. Even if true, Your Honor, this objection doesn't  
prevent entry of the order we seek today because the company  
still has substantial negative net worth and doesn't meet the  
statutory requirements for operating an HMO in Michigan.  
Thus, all the statutory bases for liquidation and solvency  
are still met even assuming that we do exclude these  
liabilities.

Also, the report of the special deputy  
rehabilitator submitted to this Court properly includes these  
liabilities because the legal effect of Ultimed's transfer of  
this business to CCCP is unclear. For one, CVS and Rite Aid  
were not parties to the transfer, and they continued to seek  
payment from Ultimed, not CCCP, for these claims. Also,  
Wayne County did not approve the transfer of this business,  
although its approval of any transfers was required pursuant  
to the contract between Wayne County and Ultimed.

And finally, even if CCCP is legally obligated  
to reimburse Ultimed for these claims if Ultimed were to be

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dollars. Documents recently obtained by Mr. Gerber also  
indicate that the company's potential liabilities related to  
that, Wayne County, ABW Program Business, may total at a  
minimum an additional 6.5 million dollars. To meet the  
statutory requirements for operating an HMO in this state,  
Ultimed would need at least approximately 7.5 million dollars  
of capital infusion. And even were this infusion secured,  
the company couldn't successfully operate given its limited  
membership.

Based on these and the other facts set forth  
in the petition, the company should be liquidated, Your  
Honor. And the statutory bases for liquidation are contained  
in MCL 500.8116 and 8117, and are met in this case. Among  
these bases are the further attempts to rehabilitate this  
company would be futile and would significantly increase the  
risk of loss to creditors, policyholders and the public. And  
also based on Ultimed's financial condition, the Commissioner  
seeks a declaration of insolvency, which this Court is  
authorized to do. And that statutory definition of  
insolvency is met given the company's financial condition.

If I could, Your Honor, there are three  
principal objections raised in response to the petition that  
I'd like to quickly address. One is that the company's  
liabilities are overstated because they include liabilities  
arising from that Wayne County ABW Program Business, and

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paid, there's no evidence that CCCP has assets to make this  
reimbursement in which case Ultimed would be the one  
ultimately holding the bag and paying these claims.

The second objection to the petition involves  
promises or allusions to a potential cash infusion. These  
promises have been made since last October, and have resulted  
in only a limited infusion of cash in the amount of one  
million dollars made since then. And that still falls far  
short of what is required by the statutes.

The final objection is made to specific  
references to Ultimed's owner and affiliates in certain  
provisions of our proposed liquidation order. The Court  
should be aware that these companies, Ultimed and its  
affiliates, are closely held businesses and they share common  
ownership, and in many instances a significant overlap of  
officers and directors.

In addition, Mr. Gerber has found evidence  
that corporate formalities and separation have not been  
followed in many instances, and the companies and their bank  
accounts have essentially been treated as though this is one  
company. So consistent with this finding, large amounts of  
cash have been transferred out of Ultimed accounts to various  
affiliates giving rise to a claim or potential claim on  
behalf of Ultimed's liquidation estate against these  
affiliates and/or owners, officers, directors for payments of

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1 any amounts that have been transferred.

2 So based upon these facts, and the plain  
3 language contained in the statutes that we cite in the  
4 proposed order, the Court does have authority to specifically  
5 require Ultimed's owner and affiliates to cooperate in the  
6 liquidation process. And the Court also has authority to  
7 specifically enjoin Ultimed's owner and affiliates from  
8 transferring, wasting or dissipating assets that belong or  
9 are owed to Ultimed or Ultimed's estate for the benefit of  
10 Ultimed's policyholders and creditors.

11 For these reasons, Your Honor, we respectfully  
12 request that the Court enter the Commissioner's proposed  
13 liquidation order as submitted. And just for the Court's  
14 information, Mr. Gerber is here today if the Court has any  
15 questions and would like to ask him.

16 THE COURT: Thank you, Mr. Tillman?

17 MR. TILLMAN: Thank you, Your Honor. First by  
18 way of response, I'd just like to reiterate as stated in our  
19 written response that Ultimed continues its efforts to  
20 assemble funds to facilitate necessary cash infusion as  
21 conceded by the Petitioner. Ultimed has made a cash infusion  
22 into the business in the amount of one million dollars since  
23 last October, which, Your Honor, reflects seriousness -- I  
24 don't think it can be disputed that a million dollar  
25 investment does not reflect seriousness on the part of

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1 assessed by Mr. Gerber. OFIS did approve that transfer from  
2 Ultimed to CCCP. And under -- as the Court is well aware,  
3 under the doctrine of collateral estoppel, as we cited in our  
4 response, once an issue of fact has been determined by a  
5 valid and final judgment or order, that issue cannot again be  
6 relitigated by the same parties in any future lawsuit. Your  
7 Honor, that was set forth in the Local 98 case that was cited  
8 in our response.

9 Michigan law also provided that a consent  
10 order is binding upon the parties and is not appealable. And  
11 that was set forth by the Michigan Court of Appeals in the  
12 Espinoza case cited in our response.

13 Clearly, Your Honor, those cases or the  
14 underlying circumstances meet these cases squarely as the  
15 issue concerning the transfer of business was raised by  
16 Ultimed -- I'm sorry, raised by OFIS in its challenge to  
17 Ultimed of that transfer. The parties resolved the issue by  
18 stipulation and order. And as a result, those claims raised  
19 by OFIS in the previous contested case were dismissed with  
20 prejudice by way of order of the insurance Commissioner. And  
21 as a result, Your Honor, OFIS cannot, at this point,  
22 relitigate those issues and impute that liability back to  
23 Ultimed. That would reduce or remove the approximate 1.8  
24 million dollars CVS post-care liability, plus the approximate  
25 1.5 million dollars Rite Aid plus-care liability from the

9

1 Ultimed's directors in order to facilitate its compliance  
2 with the statutory net worth requirements of the insurance  
3 code.

4 Ultimed would respectfully request an  
5 additional opportunity, perhaps, Your Honor, albeit briefly,  
6 perhaps in the neighborhood of 30 days to complete a funding  
7 transaction of which it has been working on, but because it  
8 involves a sale of land, Your Honor, and involves a number of  
9 parties, it's been very complicated. And Ultimed has  
10 required telephone calls -- just as recently as today,  
11 Ultimed's directors, namely Mr. Brown, has received a call as  
12 recently as today from the Deputy Mayor of the City of  
13 Detroit, Anthony Adams, who indicates that the city continues  
14 to work on doing its share in terms of allowing that  
15 transaction to see its fruition. And so under MCLA 500.8116,  
16 Your Honor, Ultimed's directors do not believe that the  
17 fiduciary requirement has been met by the Petitioner.

18 Moving onto the other points, Your Honor, in  
19 terms of the Ultimed's stated liabilities as set forth in the  
20 petition, as well as Mr. Gerber's report, we do believe that  
21 the amount of those liabilities have been significantly  
22 overstated, because in a contested case between Ultimed and  
23 the Office of Financial and Insurance Services, OFIS, which  
24 is the acronym, did approve Ultimed's transfer of roughly  
25 half of the 6.9 million dollars in reported as liabilities as

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1 approximate 6.9 million dollars reported liability number.

2 THE COURT: Wait, Mr. Tillman. Maybe I'm  
3 missing something, but the fact that OFIS may or may not have  
4 approved the transfer does not affect who CVS Pharmacy can  
5 sue for this obligation. Whether they approve a transfer or  
6 don't approve a transfer does not reflect on who is liable on  
7 the books for that obligation. Am I missing something there?  
8 Isn't that the law? CVS has independent rights. OFIS  
9 doesn't run CVS Pharmacy, so I don't understand it.

10 MR. TILLMAN: OFIS doesn't run or control CVS  
11 or Rite Aid Pharmacies, Your Honor.

12 THE COURT: Right.

13 MR. TILLMAN: But the law provides that once  
14 OFIS raised the issue --

15 THE COURT: OFIS cannot necessarily go back  
16 and say the transfer isn't any good. That's fine and dandy.

17 MR. TILLMAN: That's effectively what they are  
18 doing, Your Honor, by attempting to impute that liability  
19 back to Ultimed.

20 THE COURT: No. What they are saying, sir, is  
21 that even though the transfer may have been approved in a  
22 contested case proceeding by a consent decree, it doesn't  
23 mean that CVS Pharmacy can't go back to Ultimed to collect  
24 the money. Ultimed made the agreement with CVS Pharmacy and  
25 Rite Aid, didn't they?

10

1 MR. TILLMAN: That's conceded, Your Honor.

2 THE COURT: Did either of them sign any  
3 agreement to allow the transfer of this liability to a third  
4 party?

5 MR. TILLMAN: No, they have not, Your Honor.

6 THE COURT: Am I missing something then?

7 MR. TILLMAN: Your Honor, I just --

8 THE COURT: I'm trying to tell you,

9 Mr. Tillman, whether it is a liability on the books or not is  
10 for another forum. But the fact that a transfer was approved  
11 does not affect -- you're just saying that they can't claim  
12 that as a liability of the company because they approved a  
13 transfer. That makes no sense.

14 MR. TILLMAN: Well then, what was the legal  
15 effect of permitting the transfer of the liability, Your  
16 Honor. Essentially, what the Court --

17 THE COURT: It didn't --

18 MR. TILLMAN: -- is alluding to is that there  
19 was no, there was no transfer, and OFIS has permitted a  
20 transfer to take place.

21 THE COURT: Allowing someone to make a third  
22 party also liable for the same obligation that you're liable  
23 for hardly makes it bad for OFIS. Am I missing that? To  
24 allow the transfer doesn't mean anything. CVS Pharmacy may  
25 at this point have rights against both people to collect if

11

1 THE COURT: That's what I can do. So that's  
2 all I do. I don't tell people what to -- you came in here  
3 claiming that they didn't want to pay third-party claims to  
4 other people. It was nothing to do with Ultimed. That's  
5 what I heard, Mr. Tillman.

6 MR. TILLMAN: Your Honor, my point is, that  
7 adding the names of those entities that I've identified adds  
8 nothing and merely creates the potential for confusion in  
9 terms of those entities who are not parties to this action in  
10 terms of their transaction of business prospectively. And  
11 because the Court -- there were two -- there was the April --  
12 I'm sorry, the February 8, 2006 letter agreement that was  
13 executed by Mr. Kerr on OFIS's behalf by me on the directors  
14 of Ultimed's behalf, as well, Your Honor.

15 THE COURT: Sure.

16 MR. TILLMAN: And then there was -- on January  
17 30th of 2006, there was a stipulated order permitting Health  
18 Care of Michigan to continue its payments to and business  
19 relationship with Community Care Partners, Inc. And the  
20 reason -- the necessity for those clarifications, Your Honor,  
21 is because third parties interpreted the rehabilitation order  
22 as somehow enjoining the ability of those entities to do  
23 business. And that's the only reason why we came back to the  
24 Court. That's the only reason why we troubled the Court in  
25 terms of obtaining those clarifications.

13

1 funds had been transferred into that other company, for  
2 example. All right. So with all due respect to you, whether  
3 it is a liability on the books or not is for another forum to  
4 determine. But I don't think the fact that they allowed a  
5 transfer affects at all whether the company owes the money to  
6 somebody. So go ahead.

7 MR. TILLMAN: Your Honor, moving onto the  
8 settlement of the language of the proposed order, Ultimed  
9 simply reflects that the order track the statutory language  
10 verbatim. As the Court is well aware, in the order of  
11 rehabilitation that was entered on January 25th of 2006,  
12 there was specific references made to Harley K. Brown,  
13 Advanced Medical Enterprises, Advanced Medical Security,  
14 Ulicare, Community Health Care Providers, d/b/a United  
15 Community Hospital, Community Care Partners, and Community  
16 Coordinated Care Plan. And as a result of those specific  
17 references, Your Honor, as I'm sure the Court recalls, there  
18 was confusion that ensued on the part of those entities, who  
19 are not parties to this proceeding, over which this Court has  
20 no jurisdiction in this --

21 THE COURT: That's not true. Are you telling  
22 me I can't tell a party that owes money to Ultimed not to  
23 expend it? That I can't tell a party that owes money to this  
24 company not to hold it in escrow or not to pay a bill?

25 MR. TILLMAN: No, that's not what I'm saying.

12

1 THE COURT: Let me explain again, Mr. Tillman.  
2 And I know I've cut you off, but let me just explain  
3 something to you. I can't help what lawyers for other  
4 companies read. I told you that before. I signed a letter  
5 to those people because apparently their law school education  
6 was different than mine, since that order in no way affected  
7 anybody's right to do normal business in the course of their  
8 affairs. I did a letter because there was this confusion.  
9 It was amazing to me. I've been doing rehabilitation for 14,  
10 15, longer than I care to, and I've never had anybody have a  
11 concern about language. I've had multi, multi -- how big was  
12 this other mess, Wellness Plan? How big was AKUC? How big  
13 was the one with six thousand claims in California alone? We  
14 never had anybody have a problem with paying their bills to  
15 other people. So I didn't understand it. I still don't  
16 understand it. So let's be clear. I have had instances  
17 where assets of companies have been manipulated in an effort  
18 to avoid using them to pay the genuine debts of that company.  
19 I don't want that to happen again. If that has happened, we  
20 will have hearings and I will order those funds repaid. If  
21 it hasn't happened, we won't be doing that.

22 MR. TILLMAN: Your Honor, but --

23 THE COURT: I am in the midst of a statement.  
24 But it is clear that I have the authority to enjoin  
25 shareholders, stockholders, officers, and people who have

14



1 funds belonging to this company from doing anything with  
2 those funds other than paying its legitimate debts. That's  
3 all I would ever intend to do. If Mr. Kerr has put more than  
4 that in there, we wouldn't be doing it. Now you're trying to  
5 say I can't stop people from wasting the assets of a company.  
6 I think I can. Now, what else do you want to add to that,  
7 because I don't understand where you're coming from when you  
8 want me to come in here and explain the law to people?

9 MR. TILLMAN: Your Honor, we simply want to --  
10 the Respondent simply wants to minimize the probability of  
11 confusion.

12 THE COURT: Then tell them to call you.

13 MR. TILLMAN: Your Honor, the third parties  
14 are going to look to the -- as they have in the past, they  
15 are going to look to the order entered by the Court. And to  
16 include the names of the, of Mr. Brown and the entities that  
17 I identified does not expand the statutory scope at all.  
18 What it does is potentially give rise to the probability of  
19 confusion on the parts and in the minds of third parties.

20 THE COURT: Mr. Tillman, are these the same  
21 entities that had confusion about my previous order?

22 MR. TILLMAN: Your Honor, because the order --

23 THE COURT: Is this the same entities that  
24 were confused about my previous order that we had to write a  
25 letter to them?

15

1 THE COURT: We had a hearing and I entered an  
2 order enjoining certain activities.

3 MR. TILLMAN: Yes.

4 THE COURT: Obtaining money. You came in and  
5 filed a motion asking me to modify that order because a  
6 number of entities were confused as to whether they could pay  
7 their bills or not.

8 MR. TILLMAN: As to whether they could  
9 continue to do business with, specifically, one of the  
10 entities identified in the list of companies that I named.

11 THE COURT: All right.

12 MR. TILLMAN: And then --

13 THE COURT: So these were third parties?

14 MR. TILLMAN: Yes, these were third parties.

15 THE COURT: Okay. That's fine. Okay. No  
16 problem. Anything you want to add, sir?

17 MR. TILLMAN: Simply, Your Honor, that the  
18 order should require and specify intervals of accountings to  
19 be made to the Court as required by MCLA 500.8118(4). And  
20 also, we would request that any order entered by the Court  
21 permit and require payment of Ultimed's directors' defense  
22 costs and other expenses from Ultimed's assets as permitted  
23 by MCL 500.8116(1).

24 I just want to reiterate that Ultimed believes  
25 that its further efforts to raise additional capital would

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1 MR. TILLMAN: It's hard for me to answer that  
2 question, Your Honor, because the order has not yet been  
3 entered, so it has not been interpreted and construed by  
4 any --

5 THE COURT: The February order?

6 MR. TILLMAN: Yes.

7 THE COURT: Is this the same entities that had  
8 confusion with my February order, or some of the entities?

9 MR. TILLMAN: Certainly potentially it could  
10 be, Your Honor, but because --

11 THE COURT: Wait, wait. You came in here and  
12 asked me to revise an order because some of these different  
13 companies were confused about how it affected them. I simply  
14 want to know if these are some of the same companies listed  
15 in this current order that we're having confusion before?

16 MR. TILLMAN: Yes, Your Honor.

17 THE COURT: So you didn't tell me that. You  
18 didn't tell me that this is other companies owned by your  
19 client. I didn't know that. Did you know that? I wasn't  
20 told that. It was not represented to me at any time that  
21 these were other entities having a business relationship with  
22 Ultimed. I'm concerned about that.

23 MR. TILLMAN: Your Honor, now I'm confused.

24 THE COURT: Well, let's go over it again.

25 MR. TILLMAN: Sure.

16

1 not be futile, Your Honor. And that under MCLA 500.8116,  
2 this Court has discretion to permit Ultimed an additional  
3 opportunity of time in order to raise such assets. And  
4 Mr. Harley K. Brown, who is chairman of the board of Ultimed,  
5 and was president/CEO, certainly until the entry of the  
6 Court's January 28 rehabilitation order, is in the court,  
7 Your Honor, and has requested that he be permitted to address  
8 Your Honor, as well, if the Court would permit.

9 THE COURT: Is he an attorney?

10 MR. TILLMAN: No, he is not, Your Honor.

11 THE COURT: I don't understand.

12 MR. TILLMAN: He simply wanted to make some  
13 statements as the previous owner of the company until the  
14 time that the rehabilitation order --

15 THE COURT: There was plenty of opportunity to  
16 prepare an affidavit.

17 MR. TILLMAN: Well, there was an affidavit  
18 that we submitted, Your Honor, but it only addressed the  
19 issue of concerning the collateral estoppel.

20 THE COURT: I understand that.

21 MR. TILLMAN: And our belief that the asset,  
22 I'm sorry, the liabilities of Ultimed have been overstated by  
23 the Insurance Commissioner.

24 THE COURT: Okay. Thank you.

25 MR. TILLMAN: Thank you, Your Honor.

18

1 THE COURT: Well, my position is this,  
2 Mr. Tillman, is that the assets are far, far, far less than  
3 the liabilities of this company. And it does not seem  
4 reasonable to me to expect that anybody is going to infuse  
5 enough cash to reasonably anticipate this company being  
6 brought out of bankruptcy, so I will agree with the Insurance  
7 Commissioner.

8 I will, however, indicate that in a lot of  
9 these circumstances, if someone wishes to, for example,  
10 purchase the assets of the company or purchase something, the  
11 Commissioner's office I'm assuming is open to that type of  
12 suggestion where that could happen. And then that would, of  
13 course, defeat the purposes of the bankruptcy since then  
14 you'd have the assets to pay the obligations of the company.  
15 So that certainly could be done at any time in this matter.  
16 So the fact that we are in a liquidation proceeding does not  
17 mean that assets or the ability of someone to purchase these  
18 assets or do something is ever affected in any way. So if  
19 there is cash to be infused it is available. But there's  
20 only 77 people who are even signed up, anymore than half of  
21 them being members of the staff. So it doesn't look very  
22 likely there's going to be big infusions of money into this  
23 company. So I'll sign the order and I will enjoin entities  
24 having a relationship with doing those things.

25 MR. KERR: Thank you, Your Honor.

19

1 paragraph 6, just for the Court's information. So that's  
2 already included. With respect to payment of defense costs,  
3 as the statute says, that's a may, Your Honor. It is  
4 permissive, not obligatory. And we believe that it's  
5 inappropriate in light of this company's condition and the  
6 significant risk that many, many creditors are not going to  
7 be paid that insiders such as officers and directors should  
8 be paid their defense costs.

9 THE COURT: Mr. Tillman is entitled to  
10 something. He's done a lot of work. So he is -- he  
11 certainly can petition for a certain amount of some fees. So  
12 I certainly want that to be considered. And the Court will  
13 consider that, Mr. Tillman, if you file an appropriate  
14 petition.

15 MR. TILLMAN: So we will add language to that  
16 effect to the proposed order that's been --

17 THE COURT: I think you can file your own  
18 order that payment of fees for defense costs are hereby  
19 ordered to be considered by the Court at the appropriate  
20 time, and that OHS shall consider that as well.

21 MR. TILLMAN: Thank you, Your Honor.

22 MR. KERR: Okay. Thank you.

23 THE COURT: No promises, but we'll see what we  
24 can do, Mr. Tillman.

25 MR. TILLMAN: Thank you, Your Honor.

21

1 THE COURT: Has the order been reviewed by  
2 Mr. Tillman?

3 MR. KERR: It was attached to our initial  
4 petition. Your Honor.

5 THE COURT: Other than your objections today,  
6 Mr. Tillman, is there any objection to me signing that order?

7 MR. TILLMAN: Simply, Your Honor, that there  
8 are a few other matters permitted by statute for this Court  
9 to order that are not reflected.

10 THE COURT: Okay. Well, you meant -- you  
11 mentioned payment of fees and things like that?

12 MR. TILLMAN: Yes.

13 THE COURT: Those are statutorily listed and  
14 they would be paid in the normal priorities as any other  
15 obligations of the company I believe is the way that works.

16 MR. TILLMAN: Your Honor, specifically what  
17 I'm referring to is MCLA 500.8116(1) provides that the  
18 Circuit Court may order payment from the insurer's assets for  
19 costs and other defense expenses as justice may require. And  
20 that is something separate and apart from payment of any fees  
21 for rehabilitation activity. And so we specifically request  
22 that that be added.

23 THE COURT: Thank you, Mr. Tillman.

24 MR. KERR: If I could, Your Honor, the  
25 provision regarding the accounting is in the order in

20

1 THE COURT: You got your order there?

2 MR. KERR: Yes, I do.

3 THE COURT: Do a little order there,  
4 Mr. Tillman. I'll be happy to sign it.

5 MR. TILLMAN: Thank you, Your Honor.

6 (Whereupon, Motion concluded at 10:28 a.m.)

22

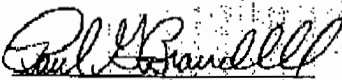


1 STATE OF MICHIGAN)  
2 ) ss  
3 COUNTY OF INGHAM )

4 I, Paul G. Brandell, Certified Shorthand  
5 Reporter, do hereby certify that the foregoing Motion for  
6 Liquidation of Receivership was taken before me at the time  
7 and place hereinbefore set forth.

8 I further certify that the foregoing is a full,  
9 true, and correct transcript of the statements taken on  
10 April 5, 2005.

11  
12 6-2-06

  
Paul G. Brandell, CGR-4552  
Certified Shorthand Reporter,  
Registered Professional Reporter

STATE OF MICHIGAN  
CIRCUIT COURT FOR THE 30<sup>TH</sup> JUDICIAL CIRCUIT  
INGHAM COUNTY

LINDA A. WATTERS, COMMISSIONER,  
MICHIGAN DEPARTMENT OF LABOR AND  
ECONOMIC GROWTH, OFFICE OF FINANCIAL  
AND INSURANCE SERVICES

Petitioner,

File No. 05-1472-CR

Hon. William E. Collette

v.

ULTIMED HMO OF MICHIGAN, INC.,  
a Michigan health maintenance organization,

Respondent.

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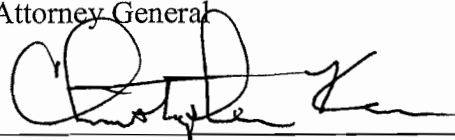
**NOTICE OF HEARING**

To: Clerk of the Court  
David K. Tillman

PLEASE TAKE NOTICE that the attached Liquidator's Motion for Possession of Equipment and Documents Necessary to Ultimed's Liquidation and Seeking to Hold Harley Brown in Contempt of Court for Disobeying the Court's April 10, 2006 Corrected Liquidation Order, filed by the Petitioner, Linda A. Watters, Commissioner, Michigan Department of Labor and Economic Growth, Office of Financial and Insurance Services, will be heard by the Honorable William H. Collette on Wednesday, June 14, 2006 at 10:00 a.m.

Respectfully submitted

Michael A. Cox  
Attorney General



---

Christopher L. Kerr (P57131)  
Assistant Attorneys General  
Michigan Department of Attorney General  
Insurance & Banking Division  
P.O. Box 30212  
Lansing, Michigan 48909

Dated: June 6, 2006

STATE OF MICHIGAN  
CIRCUIT COURT FOR THE 30<sup>TH</sup> JUDICIAL CIRCUIT  
INGHAM COUNTY

LINDA A. WATTERS, COMMISSIONER,  
MICHIGAN DEPARTMENT OF LABOR AND  
ECONOMIC GROWTH, OFFICE OF FINANCIAL  
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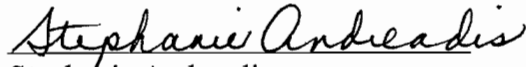
**PROOF OF SERVICE**

State of Michigan     )  
                                  ) ss  
County of Ingham     )

The undersigned certifies that on June 6, 2006 she served a true copy of Liquidator's Motion for Possession of Equipment and Documents Necessary to Ultimed's Liquidation and Seeking to Hold Harley Brown in Contempt of Court for Disobeying the Court's April 10, 2006 Corrected Liquidation Order upon counsel for Respondent by depositing same in a United States Postal Depository in the city of Lansing, Michigan, enclosed in an envelope bearing postage fully prepaid, plainly addressed as follows:

David K. Tillman, Esq.  
Tillman & Tillman, P.C.  
3400 Russell Street, Suite 205  
Detroit, MI 48207-2018

A PDF copy of said pleading is also being sent to Mr. Tillman by electronic mail at the following e-mail address: [dktilman@msn.com](mailto:dktilman@msn.com)

  
Stephanie Andreadis